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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/700,539   | 11/05/2003  | Michael Glora        | R 304344            | 6048             |
| 7590   | 03/22/2006  |                      | EXAMINER            |                  |
| Walter Ottesen<br>P.O. Box 4026<br>Gaithersburg, MD 20885-4026 |             |                      | NGUYEN, CUONG H     |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 3661                |                  |
| DATE MAILED: 03/22/2006  |             |                      |                     |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                 |                |  |
|------------------------------|-----------------|----------------|--|
| <b>Office Action Summary</b> | Application No. | Applicant(s)   |  |
|                              | 10/700,539      | GLORA, MICHAEL |  |
|                              | Examiner        | Art Unit       |  |
|                              | CUONG H. NGUYEN | 3661           |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 23 December 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☒ Claim(s) 9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

***DETAILED ACTION***

1. This Office Action is the answer to the communication received on 12/23/2003, which paper has been placed of record in the file.
2. Claims 1-9 are pending in this application.

***Drawings***

3. The submitted drawings are acceptable for examining purposes.

***Claim Rejections - 35 USC § 112***

4. Claims 1, and 3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A. As to independent claim 1: It recites the limitation "causing the actual speed of said vehicle to track a desired speed" in claim 1, line 3. There is insufficient antecedent basis for this limitation (with "the actual speed") in the claim.

B. As to dependent claim 3: It recites two unknown values (i.e., an output quantity of a drive unit" and "below a first value". The examiner respectfully submits that an assumption is required to solve an equation with two unknown here; therefore, the claim's subject matter is not positive claimed.

***Claim Objections***

5. Dependent claims 2-9 are objected because they inherit above deficiency from independent claim 1.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

*(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.*

6. Claims 1-4, and 6 are rejected under 35 U.S.C. § 102(b) as being anticipate by Nakamura (US Pat. 5,758,306).

A. As to independent claim 1: As best interpretation, this claim is directed to a method for controlling speed of a vehicle, comprising:

- causing a speed to track a desired speed (this is merely a comparison of vehicle's speed with a desired speed from a cruise control system, see Nakamura, the abstract, and col.2, lines 20-41).

Nakamura discloses about making a downshift to reduce a speed by shifting to lower gear (i.e., a downshift step to lower gear is performed when there is a difference between the target vehicle speed (desired speed) and detected vehicle speed (actual speed), 2. The method of claim 1, comprising the further step of additionally driving a brake system of said vehicle to reduce said actual speed.

B. As to claims 2, and 6: As best interpretation, Nakamura also teaches about driving a brake system of said vehicle to reduce/downshift said actual speed (see Nakamura, col.12, lines 54-56).

C. As to dependent claims 3-4: As best interpretation, Nakamura also teaches about driving a brake system when a vehicle's torque is below a reference (such as a first value adjusted for an overrun operation in an instantaneous gear stage of said transmission, see Nakamura, col.15, lines 56-66).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

**7. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nakamura (US Pat. 5,758,306).**

The rationales and references for a rejection of claim 3 are incorporated.

Nakamura does not explicitly disclose a step of driving said transmission to downshift when said output quantity of said drive unit drops below a second value which can be expected to adjust for the overrun operation in the next lower gear stage.

However, Nakamura disclose a third gear for another downshift to control a vehicle speed (see Nakamura, col.9, lines 37-40).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to implement Nakamura's patent to disclose a step of driving a transmission to downshift when a vehicle's torque drops below a value because transmission's gear directly control a vehicle speed.

**8. Claims 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakamura (US Pat. 5,758,306), in view of Winner et al. (PGPUB – US 2002/0177935)**

The rationales and references for a rejection of claim 2 are incorporated.

Nakamura does not disclose a step of driving said transmission for downshifting in dependence upon an accelerator pedal value.

However, Winner et al. drive a transmission for downshifting based on an accelerator pedal value (e.g., releasing a gas/acceleration pedal (sensor 34), see Winner et al., para.[0036]). The examiner respectfully submits that iteratively increasing a value is considered as pressing a gas pedal.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine Nakamura with Winner et al. to suggest about driving a transmission for downshifting in dependence upon an accelerator pedal value to automatically resume speed regulations.

#### ***Allowable Subject Matter***

9. Claim 9 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### **Conclusions**


10. The prior art made of record, which are listed in PTO-892, and not relied upon are considered pertinent to applicant's disclosure.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to CUONG H. NGUYEN whose telephone number is 571-272-6759 (email address: cuong.nguyen@uspto.gov). The examiner can normally be reached on 9:00 am - 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, THOMAS G. BLACK can be reached on 571-272-6956. The Rightfax number for the organization where this application is assigned is 571-273-6759.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Please provide support, with page and line numbers, for any amended or new claim in an effort to help advance prosecution; otherwise any new claim language that is introduced in an amended or new claim may be considered as new matter, especially if the Application is a Jumbo Application.

  
CUONG H. NGUYEN  
Primary Examiner  
Art Unit 3661